

AMENDED IN SENATE JUNE 12, 2000
AMENDED IN SENATE JUNE 7, 2000
AMENDED IN SENATE JUNE 5, 2000
AMENDED IN ASSEMBLY MAY 1, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000
AMENDED IN ASSEMBLY APRIL 4, 2000
AMENDED IN ASSEMBLY MARCH 20, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1761

**Introduced by Assembly Members Brewer and Rod
Pacheco
(Coauthors: Assembly Members Cunneen and Maldonado)
(Coauthor: Senator Speier)**

January 18, 2000

An act to add Chapter 5.6 (commencing with Section 6450) to Division 3 of, and to repeal Section 6450 of, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1761, as amended, Brewer. Professions and vocations: paralegals.

Existing law defines the qualifications for and regulates the practice of various professions and vocations.

This bill would establish the qualifications for practice as a paralegal and make it unlawful for any person to identify himself or herself as a paralegal unless he or she meets those qualifications and performs all services under the direct supervision of an active member of the State Bar of California. This bill would also make a paralegal subject to the same confidentiality requirements as an attorney.

This bill would in addition make it unlawful for a paralegal to perform any services for a consumer, as defined, except as directed by the attorney or entity employing or contracting with the paralegal. *This bill would prohibit a paralegal from performing various acts, including giving legal advice, representing a client in court, and acting as a runner or capper. This bill would make an attorney using a paralegal's services liable for the negligence or misconduct of the paralegal.* This bill would provide for the recovery of attorney's fees in a civil action brought in connection with a violation of these provisions.

Because a violation of the bill's provisions would be punishable as an infraction or as a misdemeanor, as specified, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5.6 (commencing with Section
2 6450) is added to Division 3 of the Business and
3 Professions Code, to read:
4

CHAPTER 5.6. PARALEGALS

6450. (a) "Paralegal" means a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal ~~are those traditionally performed by an attorney~~ and include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; and collecting, compiling, and utilizing technical information to make an independent decision and recommendation to an attorney.

~~(b) A paralegal shall not give legal advice, represent a client in court, or establish~~ *Notwithstanding subdivision (a), a paralegal shall not do any of the following:*

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This subdivision paragraph does not apply to fees charged by

1 a paralegal in a contract to provide paralegal services to
2 an attorney, law firm, corporation, governmental agency,
3 or other entity as provided in subdivision (a).

4 (c) A paralegal shall possess at least one of the
5 following:

6 (1) A certificate of completion of a paralegal program
7 approved by the American Bar Association.

8 (2) A certificate of completion of a paralegal program
9 at, *or a degree from*, a postsecondary institution that
10 requires the successful completion of a minimum of 24
11 semester, or equivalent, units in law-related courses and
12 that has been accredited by a national or regional
13 accrediting organization or approved by the Bureau for
14 Private Postsecondary and Vocational Education.

15 (3) A baccalaureate degree or an advanced degree in
16 any subject, a minimum of one year of law-related
17 experience under the supervision of an active member of
18 the State Bar of California, and a written declaration from
19 this attorney stating that the person is qualified to
20 perform paralegal tasks.

21 (4) A high school diploma or general equivalency
22 diploma, a minimum of three years of law-related
23 experience under the supervision of an active member of
24 the State Bar of California, and a written declaration from
25 this attorney stating that the person is qualified to
26 perform paralegal tasks.

27 (d) All paralegals shall be required to certify
28 completion every three years of four hours of mandatory
29 continuing legal education in legal ethics. All continuing
30 legal education courses shall meet the requirements of
31 Section 6070. Every two years, all paralegals shall be
32 required to certify completion of four hours of mandatory
33 continuing education in either general law or in a
34 specialized area of law. Certification of these continuing
35 education requirements shall be made with the
36 paralegal's supervising attorney.

37 (e) A paralegal does not include a nonlawyer who
38 provides legal services directly to members of the public
39 or a legal document assistant or unlawful detainer
40 assistant as defined in Section 6400.

(f) If a legal document assistant, as defined in subdivision (c) of Section 6400, has registered, on or before January 1, 2001, as required by law, a business name that includes the word “paralegal,” that person may continue to use that business name until he or she is required to renew registration. Thereafter, that person shall no longer be allowed to use the title “paralegal.”

~~(g) For purposes of this article, individuals employed by the state as a paralegal, legal assistant, legal analyst, or similar title shall be exempt from the provisions of this bill.~~

~~(h) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.~~

6450. (a) “Paralegal” means a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal ~~are those traditionally performed by an attorney and~~ include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; and collecting, compiling, and utilizing technical information to make an independent decision and recommendation to an attorney.

~~(b) A paralegal shall not give legal advice, represent a client in court, or establish~~ *Notwithstanding subdivision (a), a paralegal shall not do the following:*

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

1 (5) *Engage in conduct that constitutes the unlawful*
2 *practice of law.*

3 (6) *Contract with, or be employed by, a natural person*
4 *other than an attorney to perform paralegal services.*

5 (7) *In connection with providing paralegal services,*
6 *induce a person to make an investment, purchase a*
7 *financial product or service, or enter a transaction from*
8 *which income or profit, or both, purportedly may be*
9 *derived.*

10 (8) *Establish the fees to charge a client for the services*
11 *the paralegal performs, which shall be established by the*
12 *attorney who supervises the paralegal's work. This*
13 ~~*subdivision paragraph*~~ *does not apply to fees charged by*
14 *a paralegal in a contract to provide paralegal services to*
15 *an attorney, law firm, corporation, governmental agency,*
16 *or other entity as provided in subdivision (a).*

17 (c) A paralegal shall possess at least one of the
18 following:

19 (1) A certificate of completion of a paralegal program
20 approved by the American Bar Association.

21 (2) A certificate of completion of a paralegal program
22 at, *or a degree from,* a postsecondary institution that
23 requires the successful completion of a minimum of 24
24 semester, or equivalent, units in law-related courses and
25 that has been accredited by a national or regional
26 accrediting organization or approved by the Bureau for
27 Private Postsecondary and Vocational Education.

28 (3) A baccalaureate degree or an advanced degree in
29 any subject, a minimum of one year of law-related
30 experience under the supervision of an active member of
31 the State Bar of California, and a written declaration from
32 this attorney stating that the person is qualified to
33 perform paralegal tasks.

34 (d) All paralegals shall be required to certify
35 completion every three years of four hours of mandatory
36 continuing legal education in legal ethics. All continuing
37 legal education courses shall meet the requirements of
38 Section 6070.

39 (e) A paralegal does not include a nonlawyer who
40 provides legal services directly to members of the public,

1 or a legal document assistant or unlawful detainer
2 assistant as defined in Section 6400.

3 (f) This section shall become operative on January 1,
4 2004.

5 6451. It is unlawful for a paralegal to perform any
6 services for a consumer except as directed by the
7 attorney, law firm, corporation, government agency, or
8 other entity that employs or contracts with the paralegal.
9 Nothing in this section shall prohibit a paralegal who is
10 employed by an attorney, law firm, governmental
11 agency, or other entity from providing services to a
12 consumer served by one of these entities if those services
13 are specifically allowed by statute, case law, or court rule.
14 “Consumer” means a natural person, firm, association,
15 organization, partnership, business trust, corporation, or
16 public entity.

17 6452. (a) It is unlawful for a person to identify himself
18 or herself as a paralegal on any advertisement, letterhead,
19 business card or sign, or elsewhere unless he or she has
20 met the qualifications of subdivision (c) of Section 6450
21 and performs all services under the direct supervision of
22 an active member of the State Bar of California who is
23 ~~ultimately~~ responsible for all of the services performed by
24 the paralegal. The business card of a paralegal shall
25 include the name of the law firm where he or she is
26 employed or a statement that he or she is employed by or
27 contracting with a licensed attorney.

28 (b) *An attorney who uses the services of a paralegal is*
29 *liable for any harm caused as the result of the paralegal’s*
30 *negligence, misconduct, or violation of this chapter.*

31 6453. A paralegal is subject to the same duty as an
32 attorney specified in subdivision (e) of Section 6068 to
33 maintain inviolate the confidentiality, and at every peril
34 to himself or herself to preserve the attorney-client
35 privilege, of a consumer for whom the paralegal has
36 provided any of the services described in subdivision (a)
37 of Section 6450.

38 6454. The terms “paralegal,” “legal assistant,”
39 “attorney assistant,” “freelance paralegal,”

1 “independent paralegal,” and “contract paralegal” are
2 synonymous for purposes of this chapter.

3 6455. (a) Any consumer injured by a violation of this
4 chapter may file a complaint and seek redress in any
5 municipal or superior court for injunctive relief,
6 restitution, and damages. Attorney’s fees shall be
7 awarded in this action to the prevailing plaintiff.

8 (b) Any person who violates the provisions of Section
9 6451 or 6452 is guilty of an infraction for the first violation,
10 which is punishable upon conviction by a fine of up to two
11 thousand five hundred dollars (\$2,500) as to each
12 consumer with respect to whom a violation occurs, and is
13 guilty of a misdemeanor for the second and each
14 subsequent violation, which is punishable upon
15 conviction by a fine of two thousand five hundred dollars
16 (\$2,500) as to each consumer with respect to whom a
17 violation occurs, or imprisonment in a county jail for not
18 more than one year, or by both that fine and
19 imprisonment. Any person convicted of a violation of this
20 section shall be ordered by the court to pay restitution to
21 the victim pursuant to Section 1202.4 of the Penal Code.

22 6456. *An individual employed by the state as a*
23 *paralegal, legal assistant, legal analyst, or similar title, is*
24 *exempt from the provisions of this chapter.*

25 SEC. 2. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution because the only costs that may be incurred
28 by a local agency or school district will be incurred
29 because this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition
33 of a crime within the meaning of Section 6 of Article
34 XIII B of the California Constitution.